

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 634

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Constantine

SUBJECT: Transportation Disadvantaged

DATE: February 15, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/1 amendment</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes a number of administrative changes to the Commission for the Transportation Disadvantaged (commission). It significantly restructures the commission by reducing the commission's membership from 27 to 7 persons. All seven voting members will be appointed by the Governor, in accordance with the requirements of s. 20.052, F.S. Two of the members must be persons with a disability and who use the transportation disadvantaged system; five of the members must have significant experience in the operation of a business. The bill provides that the top executive or their designee, from each of the following entities, will serve as ex officio, nonvoting advisors of the commission:

- The Department of Transportation (DOT);
- The Department of Children and Family Services;
- The Agency for Workforce Innovation;
- The Department of Veteran's Affairs;
- The Department of Elderly Affairs;
- The Agency for Health Care Administration (AHCA);
- The Agency for Persons with Disabilities; and
- An elected local government official who is appointed by the Governor.

As a result of reducing the membership of the commission, the bill revises from nine to five the number of commission members who are needed to constitute a quorum. In addition, the bill provides the chair of the commission shall be appointed by the Governor.

The bill also specifies a number of requirements for commission members:

- Commissioners must represent the needs of transportation disadvantaged persons statewide, and may not favor a specific region of the state.

- Appointed commissioners shall serve for a term of 4 years, and may be reappointed for one additional 4-year term.
- Commissioners must be residents of Florida and registered voters.
- At least one member must be 65 years of age or older.
- Appointed members may not within the five years immediately before the appointment, or during their term on the board, have or have had a financial relationship with, or represent or have represented as a lobbyist any transportation operator, community transportation coordinator, metropolitan planning organization, designated official planning agency purchaser agency, local coordinating board, broker of transportation, or provider of transportation services.

The bill directs the commission to create a technical advisory committee, and set its size and membership to include representatives of private paratransit providers. The technical advisory committee shall advise the commission on issues of importance to the state, including information, advice and direction regarding the coordination of services for the transportation disadvantaged. The bill also provides that the commission may appoint other technical advisory committees, and provides for their membership.

The bill requires each appointed candidate, prior to accepting the appointment, to undergo a security background investigation pursuant to s. 435.04, F.S., and fingerprinting.

In s. 427.013(12), F.S., the bill requires the commission to develop a funding methodology or formula that equitably distributes funds under its control, including Medicaid nonemergency funds, using specified criteria.

This bill substantially amends sections 427.012 and 427.013 of the Florida Statutes.

II. Present Situation:

Overview of the Transportation Disadvantaged Program

The Commission for the Transportation Disadvantaged, an independent entity within the DOT, created in 1979 by the Legislature pursuant to Part I of chapter 427, F.S., coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens. The mission of the commission is to ensure the availability of efficient, cost-effective and quality transportation services for transportation disadvantaged persons. The commission also administers the Transportation Disadvantaged (TD) Trust Fund. The TD Trust Fund is used to subsidize trips, provide funding for TD eligible persons not otherwise funded, and provide for administrative expenses.¹

Over the years, the Legislature has modified the program's administrative structure, program responsibilities, and funding. A 27-member commission sets state policy and oversees its statewide implementation, and distributes a share of its budgeted funds to the local providers, based on the commission's criteria. Commissioners represent a broad spectrum of interested

¹ Persons are considered transportation disadvantaged when physical or mental disability, income status, or age make them unable to transport themselves or to purchase transportation. These conditions cause them to rely on others to obtain access to health care, employment, education, shopping, or other life-sustaining activities. Handicapped children or children at-risk or high-risk are also eligible for services under this program. Section 427.011, F.S.

parties, including social service agencies, a public transit association, various citizens' advocacy groups from rural and urban areas, transportation providers, the non-transportation business community, and the DOT. Appointments to the commission are made by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Currently, this is the commission's makeup:

- The secretary of the DOT or the secretary's designee.
- The secretary of the Department of Children and Family Services or the secretary's designee.
- The Commissioner of Education or the commissioner's designee.
- The director of the Agency for Workforce Innovation or the director's designee.
- The executive director of the Department of Veterans' Affairs or the executive director's designee.
- The secretary of the Department of Elderly Affairs or the secretary's designee.
- The director of the Agency for Health Care Administration (AHCA) or the director's designee.
- A representative of the Florida Association for Community Action, who shall serve at the pleasure of that association.
- A representative of the Florida Transit Association, who shall serve at the pleasure of that association.
- A person over the age of 60 who is a member of a recognized statewide organization representing elderly Floridians. Such person shall be appointed by the Governor to represent elderly Floridians and shall be appointed to serve a term of 4 years.
- A handicapped person who is a member of a recognized statewide organization representing handicapped Floridians. Such person shall be appointed by the Governor to represent handicapped Floridians and shall be appointed to serve a term of 4 years.
- Two citizen advocate representatives who shall be appointed by the Governor for a term of 4 years, one representing rural citizens and one representing urban citizens.
- A representative of the community transportation coordinators. Such person shall be appointed by the Governor to represent all community transportation coordinators and shall be appointed to serve a term of 4 years.
- One member of the Early Childhood Council. Such person shall be appointed by the Governor to represent maternal and child health care providers and shall be appointed to serve a term of 4 years.
- Two representatives of current private for-profit or private not-for-profit transportation operators each of which have a minimum of 5 years of continuous experience operating a broad-based system of ambulatory and wheelchair/stretchers type transportation, utilizing not less than 50 vehicles and including dispatch and scheduling responsibilities. Such persons shall be appointed by the Commissioner of Agriculture to serve a term of 4 years.
- Four representatives of current private for-profit or private not-for-profit transportation operators, each of which having a minimum of 5 years of continuous experience operating a broad-based system of ambulatory and wheelchair or stretcher-type transportation, utilizing not less than 50 vehicles, and including dispatch and scheduling responsibilities. Such persons shall be appointed by the Commissioner of Agriculture to serve a term of 4 years.

- Six citizens representing the nontransportation business community of the state, three members appointed by the President of the Senate and three members appointed by the Speaker of the House of Representatives.

The commission is housed within the DOT for administrative purposes only.

Florida's 67 counties are divided into 50 TD service areas. While most urban counties are single-county service areas, some rural counties are organized into multi-county service areas. All 67 counties have some level of TD service for their elderly, disabled, or needy residents. According to the commission's most recent annual report, in fiscal year 2004-2005 almost 50.1 million trips were provided to clients, about a 12-percent decrease from 2003-2004. There were 841,190 passengers served last fiscal year. About half of the trips are to doctor's offices or medical facilities, and transportation to educational or training facilities ranks second.

Total funding for TD services in Florida – from public and private – was \$353 million in fiscal 2004-2005.² Not all of those funds were expended directly by the commission, which relied, until recently, on an average \$25 million to \$35 million it received from four statutory program earmarks and special appropriations from the Legislature.

For fiscal year 2004-2005, its state appropriation was \$38 million. As of November 1, 2004, with the signing of a memorandum of agreement with the AHCA, the commission also has spending authority over an estimated \$68 million in Medicaid funds for non-emergency transportation (NET) services for Medicaid clients.

The commission uses a somewhat complicated structure to coordinate TD services. Briefly:

- At the statewide level, the commission assists communities in establishing coordinated transportation systems; manages contracts and memoranda of agreement; ensures state agencies purchase transportation services from within the TD coordinated system, unless a more cost-effective provider outside the coordinated system can be found by the purchasing agency; and approves the local entities that manage the delivery of transportation services to eligible clients.
- At the local level, the TD program is implemented through a network of planning agencies, local advisory boards, community transportation coordinators (CTC's), and transportation operators. Local planning agencies, such as a metropolitan planning organization (MPO) or regional planning council, appoint and staff each local coordinating board. A local elected official chairs each coordinating board. These local boards also recommend the CTC to the commission.

The CTC's are the entities responsible for the actual arrangement or delivery of transportation services within their local service area. A CTC may be a government entity, a transit agency, a private not-for-profit agency or a for-profit company. A CTC may function as a sole-source provider of TD services, or it may broker part or all of the trips to transportation operators. The commission enters into a memorandum of agreement for services with a CTC. This agreement

²Commission for the Transportation Disadvantaged, *2005 Annual Report*

identifies the anticipated service population, service area, information regarding any subcontractors, and rates for services.

Another layer to this hierarchy of TD services has come into play with the commission assuming responsibility and funding for the Medicaid NET services. As managers of the NET program, the commission identifies and enters into agreements with “subcontracted transportation providers,” and pays them a monthly lump-sum amount. These subcontracted transportation providers in turn use these funds to pay the local transportation operators actually providing the services.

According to the commission, when the AHCA transferred to the commission only \$68 million in Medicaid funds, rather than the \$75 million the commission had budgeted for NET services, the commission readjusted its formula to address the budget cut. The final allocation resulted in an approximate 11 percent reduction for all counties for the November 1, 2005 – June 30, 2006 time period.

Since the summer of 2004, several legislators statewide expressed concerns about the commission, the AHCA contract, and the TD funding formulas.

III. Effect of Proposed Changes:

Section 1: The bill makes a number of administrative changes to the commission. First, it significantly restructures the commission by reducing the commission’s membership from 27 to 7 persons. The new members would be:

- Seven voting members appointed by the Governor, in accordance with the requirements of s. 20.052, F.S. Two of the members must be persons with a disability and who use the transportation disadvantaged system. Five of the members must have significant experience in the operation of a business. In addition, when making an appointment, it is the intent of the Legislature that the Governor selects persons who reflect the broad diversity of the business community in the state, as well as the racial, ethnic, geographical, and gender diversity of the population of this state.

The bill provides that the top executive or their designee, from each of the following entities, will serve as ex officio, nonvoting advisors of the commission:

- The Department of Transportation (DOT);
- The Department of Children and Family Services;
- The Agency for Workforce Innovation;
- The Department of Veteran’s Affairs;
- The Department of Elderly Affairs;
- The Agency for Health Care Administration (AHCA);
- The Agency for Persons with Disabilities; and
- An elected local government official who is appointed by the Governor.

As a result of reducing the membership of the commission, the bill also revises the number of commission members to five which are needed to constitute a quorum. In addition, the bill provides the chair of the commission shall be appointed by the Governor.

The bill also specifies a number of requirements on TD commissioners. These are:

- Commissioners are reminded they represent the needs of transportation disadvantaged persons statewide, and they shall not subordinate the transportation needs of persons statewide to favor a specific region of the state.
- Appointed commissioners shall serve for a term of 4 years and may be reappointed for one additional 4-year term.
- Commissioners must be residents of Florida and registered voters.
- At least one member must be 65 years of age or older.
- Commissioners, other than elected officials, may not within the five years immediately before the appointment, or during his or her term on the board, have or have had a financial relationship with, or represent or have represented as a lobbyist as defined in s. 11.045, F.S., the following:
 - A transportation operator;
 - A community transportation coordinator;
 - A metropolitan planning organization;
 - A designated official planning agency;
 - A purchaser agency;
 - A local coordinating board;
 - A broker of transportation; or
 - A provider of transportation services.
- The commission shall create a technical advisory committee, and set their size and membership to include representatives of private paratransit providers. The technical advisory committee shall advise the commission on issues of importance to the state, including information, advice and direction regarding the coordination of services for the transportation disadvantaged. In addition, the commission may appoint other technical advisory committees whose members may include representatives of community transportation coordinators; metropolitan planning organizations; regional planning councils; experts in insurance, marketing, economic development, or financial planning; and users of the transportation disadvantaged system, or their relatives, parents, guardians, or service professionals who tend to their needs.

In addition, the bill requires each appointed candidate, prior to accepting the appointment, to undergo a security background investigation pursuant to s. 435.04, F.S. A complete set of fingerprints taken by an authorized law enforcement agency must be filed with the DOT. The fingerprints must be submitted to the Department of Law Enforcement for state processing, and to the Federal Bureau of Investigation for federal processing. The DOT must screen the background results and report to the commission any candidate who fails to meet the level 2 screening standards of s. 435.04, F.S., which list 47 criminal offenses. Any candidate found through fingerprint processing to have failed to meet such standards may not be appointed as a member of the commission. Finally, the bill requires the costs of the background screening to be paid by the DOT or the appointed candidate. Currently, the FDLE fingerprint check costs \$23 and the FBI fingerprint check costs \$24.

Section 2: In new s. 427.013(12)(b), F.S., the bill provides that the commission must develop a funding methodology or formula that equitably distributes funds under its control, including Medicaid nonemergency funds, using criteria to include not only the actual costs of each trip, but also efficiencies a provider might adopt to reduce costs are taken into account, including cost efficiencies of trips when comparing like services to the local cost of private paratransit providers.

Section 3: Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Pursuant to s. 435.09, F.S., any criminal records or juvenile records obtained as a result of the background check are exempt from disclosure as a public record; the fingerprint records do not have a general exemption under public records law.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Candidates for the commission may be responsible for costs associated with the required background screening prior to appointment to the commission.

C. Government Sector Impact:

The DOT may be responsible for costs associated with the required background screening of a candidate prior to appointment to the commission.

VI. Technical Deficiencies:

The provisions establishing technical advisory committees, in new s. 427.012(8), F.S., lack requirements from ch. 20, F.S., as detailed in "Related Issues," below.

VII. Related Issues:

Though the bill creates a “technical advisory committee” in new s. 427.012(8), F.S., “committees” and “task forces” are created for specific durations to study specific problems.³ The entity to be created appears to be an “advisory council,” which functions on a continuing basis in a specified functional or program area.

The bill appears to give the authority to appoint the members of the advisory body to the Commission for the Transportation Disadvantaged. The bill does not provide that the advisory bodies to be created in new s. 427.012(8), F.S., comply with the requirements of s. 20.052, F.S., which requires, among other things, that an advisory body may not be created or reestablished unless: it meets a statutorily defined purpose; its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.; its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.; and, the private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³ Section 20.03(8), F.S.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
